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**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF DELAWARE, COMMONWEALTH OF MASSACHUSETTS, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF NEW YORK, STATE OF OREGON, STATE OF RHODE ISLAND, STATE OF VERMONT, and STATE OF WASHINGTON,

v.
Plaintiffs,

**UNITED STATES OF AMERICA, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, LEE ZELDIN, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency, and
DONALD J. TRUMP, in his official
capacity as President of the United States**

v. Defendants,

STATE OF TEXAS, *et al.*,

Proposed Intervenor-Defendants.

Case No.: 4:25-CV-04966-HSG

**PROPOSED AMICUS CURIAE STATE
OF IOWA AND 21 OTHER STATES
MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT
OF DISMISSAL, PROPOSED ORDER
GRANTING LEAVE TO FILE AMICUS
BRIEF, AND PROPOSED AMICUS
BRIEF**

Judge: Haywood S. Gilliam, Jr.
Date: October 23, 2025
Time: 2:00 p.m.
Place: Courtroom 2 – 4th Floor

Complaint filed: June 12, 2025

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE:** that this Motion to for Leave to file an Amicus Curiae Brief in
support of Defendants' Motion to Dismiss.

3 Pursuant to this Motion, Proposed Amicus Curiae State of Iowa, joined by a coalition of 21
4 additional States ("Iowa"), by and through its undersigned counsel, will and hereby does respectfully
5 move the Court to grant leave to file an amicus curiae brief for the following reasons:
6

- 7 • Iowa's Motion for Leave to File Amicus Brief is timely;
- 8 • Iowa has a significant interest in this litigation;
- 9 • Iowa's brief as a friend of the Court will present a helpful perspective to the Court;
and
- 10 • Iowa has sought leave to file this amicus from Plaintiffs and Defendants. Plaintiffs
11 take no position on this amicus. Defendants consent to this amicus.
12

13 This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities
herein, all pleadings, records, and papers on file in this action, and such further evidence and
14 argument as may be presented at the hearing.
15

16 DATED: September 22, 2025

17 By: /s/ Tony Francois

Tony Francois

18 **BRISCOE PROWS KAO IVESTER & BAZEL
19 LLP**

20 DATED: September 22, 2025

21 By: /s/ Eric Wessan

Eric Wessan

22 **COUNSEL FOR PROPOSED AMICUS
23 CURIAE, STATE OF IOWA
(*Pro Hac Vice application to follow*)**

24 [PROPOSED] ORDER

25 GOOD CAUSE APPEARING, the State Of Iowa's Motion for Leave To File Amicus
Brief is GRANTED.
26

27 BY: _____
28 DISTRICT JUDGE

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STATEMENT OF THE ISSUE

This matter concerns certain waivers previously granted to Plaintiff State of California under the Clean Air Act. Recently, invoking the Congressional Review Act, Congress adopted, and on June 12, 2025, Defendant President Donald J. Trump signed, resolutions disapproving California's waivers under the Act. The same day, California and the other States filed a complaint challenging Congress's enactment that reviewed and disapproved the waivers.

The Northern District of California has recognized that the “district court has broad discretion to appoint amici curiae.” *NetChoice v. Bonta*, 2023 WL 6131619, at *1 (N.D. Cal. Sept. 18, 2023) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995)). “There are no strict prerequisites to qualify as amici.” *Id.* (quotation omitted). “Amici need show only that their participation is useful to the court.” *Id.* And the “‘classic role’ of amici curiae encompasses ‘assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.’” *Id.* (quoting *Miller-Wohl Co. v. Comm’r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982)).

16 Here, the States present a unique viewpoint and offer a short explanation as to why the
17 Motion to Dismiss should be granted. The States move to file an amicus curiae brief, through this
18 timely motion, because many States challenged and have ongoing litigation against the now-
19 rescinded waivers. The States move to play the classic role of friend of the Court to raise awareness
20 of the potential implications of a ruling here.

1 **STATEMENT OF AMICUS CURIAE**

2 What Congress gives, Congress may take away. Congress, in the Clean Air Act, tasked the
 3 Environmental Protection Agency with setting federal standards for new motor vehicle emissions.
 4 Every State was thereby preempted from developing its own emissions standards—every State, that
 5 is, but California. The Act permits EPA to grant a state a waiver—in this case, it went to California—to
 6 enact vehicle emission standards more stringent than those imposed by the federal government.
 7 *See* 42 U.S.C. § 7543(b)(1). The forty-nine other States must either follow the federal government’s
 8 standards or California’s. That is, States other than California must either submit to EPA’s one-size-
 9 fits-all federal regulatory scheme for vehicle emissions or adopt California’s more demanding
 10 scheme. But the sole supposed purpose of giving California this unique—and likely unconstitutional
 11 as applied here—authority is to address local air pollution problems in California.

12 Given this awesome grant of authority under the Act, California sought to use its authority
 13 to the fullest extent by banning new internal-combustion-engine vehicles and requiring so-called
 14 “zero-emission” vehicles. *See* Office of Gov. Gavin Newsom, Exec. Order N-79-20 (Sept. 23,
 15 2020), <https://perma.cc/VK64-G93C>. Specifically, EPA issued waivers for three California
 16 programs enacted to allow Governor Newsom’s Executive Order, as implemented by the California
 17 Air Resources Board, to set the following three standards: (1) Advanced Clean Cars II, *see* Cal.
 18 Code Regs. tit. 13, § 1962.4, (2) Advanced Clean Trucks, *id.* §§ 1963.1, 1963.2, and (3) Omnibus
 19 Low NOx (“Omnibus”) Program. *id.* § 1956.8. All three are at issue in this lawsuit.

20 While California can set its own standard, the Clean Air Act allows other States to opt-in to
 21 California’s standard. And because there is a national market for cars and trucks, California’s actions
 22 reverberate across the country. So States and industry members challenged each of those waivers in
 23 lawsuits across the country. *See, e.g., Iowa v. EPA*, 23-1144 (D.C. Circuit) (challenging Advanced
 24 Clean Trucks standard); *Ohio v. EPA*, 22-1081 (D.C. Circuit) (challenging Advanced Clean Cars
 25 standard). And as part of those challenges, the petitioners highlighted the Act’s unconstitutionality.

26 Perhaps recognizing the unconstitutional basis of these EPA waivers, Congress acted. *See* 5
 27 U.S.C. §§ 801–07; *see, e.g.*, H.J. Res. 87, 119th Cong. (2025) (enacted as Pub. L. No. 119-15, 139
 28 Stat. 65 (June 12, 2025)). It acted by disapproving the three waivers, issued in January 2025, just
 weeks before President Biden left office and months after President Trump won the election

1 promising to stop issuing this type of waiver. *See California State Motor Vehicle and Engine*
 2 *Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision,*
 3 *90 Fed. Reg. 642 (Jan. 6, 2025) (“ACC II Waiver”); California State Motor Vehicle and Engine and*
 4 *Nonroad Engine Pollution Control Standards; The “Omnibus” Low NOX Regulation; Waiver of*
 5 *Preemption; Notice of Decision, 90 Fed. Reg. 643 (Jan. 6, 2025) (“Omnibus Waiver”).*

6 Using a decades-old but rarely used procedural mechanism by which Congress can exercise
 7 oversight over particularly problematic decisions from executive agencies it created, Congress
 8 revoked the three waivers, including the waiver for the Omnibus program. The President signed all
 9 three revocations. And when Congress passes, and the President signs, a “joint resolution” of
 10 disapproval, then the rule “shall not . . . continue,” and the rule “may not be reissued in substantially
 11 the same form.” 5 U.S.C. § 801(b). The joint resolution becomes federal law. *See Ctr. for Biological*
 12 *Diversity v. Bernhardt*, 946 F.3d 553, 562 & n.6 (9th Cir. 2019); *see also Diamond Alt. Energy, LLC*
 13 *v. EPA*, 145 S. Ct. 2121, 2131 (2025) (This “legislation . . . block[s] [these] California regulations.”).

14 Given Congress’s rebuke, California filed this Hail Mary lawsuit seeking to reinstate its
 15 revoked waivers. California’s efforts must fail.

16 That is why the undersigned amici curiae States file this amicus brief in support of dismissal.

BACKGROUND

17 The Clean Air Act preempts States from enacting their own vehicle emissions standards. *See*
 18 42 U.S.C. § 7543(a) (broadly prohibiting States and their subdivisions from enforcing “any standard
 19 related to the control of emissions from new motor vehicles” or their engines, or other related
 20 regulations). That preemption approach has a carve out that allows California—and only
 21 California—to establish its own emissions standards if “the State determines that the State standards
 22 will be, in the aggregate, at least as protective of public health and welfare as applicable by Federal
 23 standards.” 42 U.S.C. § 7543(b)(1). While written as if it could apply to all States, only States that
 24 “adopted standards . . . for the control of emissions . . . prior to March 30, 1966” are eligible for that
 25 carve out. *Id.* Only one state qualifies: California. That said, if California applies for and receives a
 26 waiver under that carve-out, then any State complying with California’s standards will be treated
 27 “as compliance with applicable federal standards.” 42 U.S.C. § 7543(b)(3).

28 California sought and received three waivers relevant here: (1) Advanced Clean Cars II, *see*

1 Cal. Code Regs. tit. 13, § 1962.4, (2) Advanced Clean Trucks, *id.* §§ 1963.1, 1963.2, and (3)
 2 Omnibus Low NOx (“Omnibus”) Program. *id.* § 1956.8. And Congress asserted its authority under
 3 the Congressional Review Act to disapprove of those waivers—in effect, revoking them. *Infra*
 4 Argument I.

5 This lawsuit rises from California seeking to undo the waiver recissions. Amici States weigh
 6 in to give their perspective on why California’s case should be dismissed.

SUMMARY OF ARGUMENT

- 7 1. Congress may enact a law under the Congressional Review Act stopping federal rules,
 8 like EPA’s waivers, from continuing in effectiveness.
- 9 2. This case is only moot if Congress’s enactment is effective—and it is.
- 10 3. The equal-sovereignty doctrine made the initial waivers illegal and revoking an illegal
 11 waiver cannot itself be illegal.

ARGUMENT

I. Congress Properly Disapproved of EPA’s Waivers under the Congressional Review Act.

16 Faced with California’s unprecedent war on liquid-fuel-powered vehicles, Congress
 17 responded to EPA’s post-election waivers with disapproval. EPA’s waivers allowed California, and
 18 the eleven other States that opted to follow California’s rules, to effectively ban internal-combustion
 19 engine cars and light trucks over time.

20 Congress responded. It brushed off a decades-old tool known as the Congressional Review
 21 Act to help the auto and truck industries focus on their core strengths: producing the cars and trucks
 22 Americans want. And not focusing on what the Government sometimes wants: electrification
 23 without market justification.

24 The Congressional Review Act (or “CRA”) establishes an expedited legislative procedure
 25 for Congress to review, and ultimately nullify, rules issued by federal agencies. Pub. L. No. 104-
 26 121, § 251, 110 Stat. 847, 868–74 (1996), codified at 5 U.S.C. §§ 801–808. If Congress passes, and
 27 the President signs, a “joint resolution” of disapproval of an agency’s rule, then the rule “shall not
 28 take effect (or continue),” and the rule “may not be reissued in substantially the same form” unless

1 “specifically authorized by a law enacted after the date of the joint resolution.” 5 U.S.C. § 801(b).
 2 The joint resolution is federal law, enacted in accordance with the constitutional requirements of
 3 bicameralism and presentment. One feature of the CRA is that joint resolutions are put on a
 4 legislative fast track that is exempt from the Senate’s ordinary filibuster rule and that limits the
 5 motions that Senators may raise. 5 U.S.C. § 802(d).

6 The CRA requires federal agencies to “submit to each House of the Congress and to the
 7 Comptroller General” each rule it promulgates, along with a report that includes “a concise general
 8 statement relating to the rule.” 5 U.S.C. § 801(a)(1)(A). Once Congress receives the rule, it generally
 9 has 60 days to introduce a joint resolution if it wishes to “disapprove” of it. *Id.* § 802(a).

10 When an agency fails to submit a rule to Congress, Congress has alternatives for how to
 11 review a rule—should it want to. One approach is to ask the Government Accountability Office for
 12 an opinion on whether the agency action is a rule for Congressional Review Act purposes. If it is,
 13 Congress tends to use publication of the GAO’s opinion in the Congressional Record as the date to
 14 start the 60-day timer. Maeve P. Carey & Christopher M. Davis, Cong. Rsch. Serv., R43992, *The*
15 Congressional Review Act (CRA): Frequently Asked Questions 12–13 (updated Nov. 12, 2021).
 16 GAO’s rule is not laid out in statute or code; this informal approach is meant to be helpful and is
 17 purely advisory because the Congressional Review Act leaves to Congress the question of “whether”
 18 CRA disapproval applies. GAO, B-325553, *GAO’s Role and Responsibilities Under the*
Congressional Review Act 9 (May 29, 2014) (“GAO Letter B-32552”).

19 One concern raised by Plaintiffs—including California—is that EPA did not submit its
 20 waivers, including the Omnibus Waiver, to Congress. Because of that failure, they contend, the
 21 statutory 60-day timer did not start until the EPA transmitted the waivers to Congress, which did
 22 not occur until *after* EPA concluded that the waivers were rules subject to the Congressional Review
 23 Act. See 171 Cong. Rec. S1311 (daily ed. Feb. 24, 2025) (EC-439, EC-440, EC-441); 171 Cong.
 24 Rec. H875 (daily ed. Feb. 26, 2025) (EC-484, EC-485, EC-486); 171 Cong. Rec. H1035 (daily ed.
 25 Mar. 6, 2025) (EC-518, EC-519, EC-520); 171 Cong. Rec. S1871 (daily ed. Mar. 26, 2025) (EC-
 26 660, EC-661, EC-662).

27 After some internal Congressional procedural wrangling, resolutions of disapproval for all
 28 three waivers were introduced in the U.S. House of Representatives. By May 1, 2025, the House

1 had passed all three Resolutions with bipartisan majorities, including 35 Democratic House
 2 members, voting to repeal the ACC II Waiver. Roll Call 114 | Bill Number: H.J. Res. 88, U.S. House
 3 of Representatives (May 1, 2025), *see* <https://perma.cc/46A6-JNK3>.

4 Next, the Senate moved to consider the three Resolutions by majority vote. On May 22, the
 5 Senate voted to adopt all three. The Senate’s disapproval of the ACC II Waiver was also bipartisan,
 6 with Senator Elissa Slotkin voting with Senate Republicans. Roll Call Vote Summary on H.J. Res.
 7 88, U.S. Senate (May 22, 2025), *see* <https://perma.cc/B4X7-YA4U>. On June 12, President Trump
 8 signed the Resolutions into law. Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139
 9 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025).

10 This should have ended the saga of EPA’s waivers purporting to allow for, effectively, the
 11 widespread banning of internal-combustion powered cars. Not only is a joint disapproval conclusive
 12 and prohibitive of the agency rule, but a joint resolution is, by law, unreviewable. Specifically, the
 13 Congressional Review Act strips jurisdiction from courts to hear challenges to laws enacted under
 14 its authority: “No determination, finding, action, or omission under this chapter shall be subject to
 15 judicial review.” 5 U.S.C. § 805. “On its face, this language bars judicial review of all challenges to
 16 actions under the CRA, including constitutional challenges.” *Ctr. for Biological Diversity*, 946 F.3d
 17 at 561.

18 Yet despite this, Plaintiffs challenged all three CRA disapprovals.

19 **II. This Court Should Dismiss this Case.**

20 Plaintiffs want this Court to undo Congress’s action. There are many reasons why this Court
 21 should decline that invitation. Indeed, there are several preceding grounds that deprive this Court of
 22 jurisdiction. For example, one reason that this challenge must fail is the political question doctrine.
 23 Another is standing—at least as it pertains to redressability. This Court cannot grant “any effective
 24 relief” to [Plaintiffs] if [it] were to rule in its favor on the merits.” *Nevada v. Watkins*, 943 F.2d 1080,
 25 1083 (9th Cir. 1991) (citing *Garcia v. Lawn*, 805 F.2d 1400, 1402 (9th Cir. 1986)).

26 In an analogous circumstance, the Ninth Circuit held that if “legislation passing
 27 constitutional muster is enacted while a case is pending on appeal that makes it impossible for the
 28 court to grant any effectual relief, the appeal must be dismissed as moot.” *Consejo de Desarrollo*

1 *Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1168 (9th Cir. 2007).

2 So too here. Congress has passed a Congressional Review Act law that disapproves and
 3 vacates the Omnibus Waiver. Without closing the door to challenging Congressional Review Act
 4 abrogation in other circumstances, here there are no nonfrivolous challenges to Congress's
 5 abrogation of that waiver. This challenge raises separation of powers issues. And any challenges to
 6 that waiver run headlong into the Congressional Review Act's jurisdiction stripping. *See* 5 U.S.C.
 7 § 805; *see also Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980–81 (9th Cir. 2007) (“[P]olitical
 8 question[s] deprive[] a court of subject matter jurisdiction.”); *Japan Whaling Ass'n v. Am. Cetacean
 9 Soc'y*, 478 U.S. 221, 230 (1986) (political questions “revolve around policy choices and value
 10 determinations constitutionally committed for resolution to the halls of Congress or the confines of
 11 the Executive Branch.”).

12 This Court should simply dismiss Plaintiffs' challenge. Indeed, any challenges to the
 13 Congressional Review Act disapprovals risks resuscitating dead claims. And that could very well
 14 prejudice parties that rely on Congress and their authority in dismissing challenges to rules they
 15 believe were properly vacated by Congress lawfully applying the Congressional Review Act. 3,
 16 1179 (9th Cir. 2011).

17 **III. The Clean Air Act Violates the Equal Sovereignty Doctrine Insofar As It Preempts
 18 State Laws Unequally, the EPA's Waivers Are Thus Unlawful.**

19 **A. The Constitutional equal-sovereignty doctrine forbids singling out States for
 20 special treatment.**

21 The United States of America “was and is a union of States, equal in power, dignity, and
 22 authority, each competent to exert that residuum of sovereignty not delegated to the United States
 23 by the Constitution itself.” *Coyle v. Smith*, 221 U.S. 559, 567 (1911). Indeed, “‘constitutional
 24 equality’ among the States,” can be found in the U.S. Constitution’s text and structure. *Franchise
 25 Tax Bd. v. Hyatt*, 578 U.S. 171, 179 (2016) (citation omitted). Equal sovereignty of the States, while
 26 “not spelled out in the Constitution,” is “nevertheless implicit in its structure and supported by
 27 historical practice.” *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 247 (2019).

28

1 While the separation of powers is often described as checks and balances between the three
 2 branches of federal government, that concept also plays a role in federalism—the respect between
 3 the federal government and States and between the States themselves. The equal-sovereignty
 4 doctrine thus accords with the “separation of powers,” which the Framers viewed “as the absolutely
 5 central guarantee of a just Government.” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J.,
 6 dissenting).

8 Moreover, separation of powers depends as much on “preventing the diffusion” of power as
 9 it does on stopping the centralization of power. *Freytag v. Comm'r*, 501 U.S. 868, 878 (1991). After
 10 all, to avoid “a gradual concentration” of governmental authority in either the States or federal
 11 government, or within a particular branch of the federal government, *see The Federalist No. 51*,
 12 p.349 (James Madison) (Jacob Cooke ed., 1961), the States and the federal branches must retain the
 13 power the Constitution assigns to them. *See Seila Law LLC v. CFPB*, 591 U.S. 197, 223–24 (2020).

15 The equal-sovereignty doctrine thus works to preserve this constitutional balance. It allows
 16 Congress to enact preemptive laws, which necessarily limit State sovereignty, but prevents Congress
 17 from selectively limiting State sovereignty or, even worse, targeting or discriminating against
 18 specific States. “[T]he Framers explicitly chose a Constitution that confers upon Congress the power
 19 to regulate individuals, not States.” *New York v. United States*, 505 U.S. 144, 166 (1992); *see also*
 20 *Murphy v. Nat'l Collegiate Athletic Assoc.*, 584 U.S. 453, 471 (2018).

22 As such, no State should be subjected to disparate treatment of its sovereign authority. But
 23 the EPA waivers to California allows California—and California alone—to effectively mandate
 24 motor vehicle emission standards. Due to both the national market and the Clean Air Act allowing
 25 other States to join California’s alternative standards, Automobile manufacturers have shown they
 26 are not willing to produce two sets of vehicles for sale within the United States. Instead, they want
 27 “nationwide regulatory certainty and a remit from the possibility of a ‘patchwork quilt’ of numerous

1 and differing state-level regulatory programs for emissions from newly manufactured motor
 2 vehicles or newly manufactured motor vehicle engines. Congressional Research Service, *California*
 3 *and the Clean Air Act (CAA) Waiver: Frequently Asked Questions* at 3 (May 9, 2025),
 4 <https://perma.cc/C98Y-Z23E>. Thus, regardless of whether any of California's sister States opt in to
 5 California's draconian standards, those standards would become the de facto national standard
 6 governing our nation's automobile industry. Indeed, the California Air Resources Board has
 7 explained that California's intent when adopting the emissions standards at issue here was to create
 8 "an alternative path forward for clean vehicle standards nationwide" that circumvents federal
 9 standards. Press Release, *California and major automakers reach groundbreaking framework*
 10 *agreement on clean emission standards*, Cali. Air Res. Bd. (July 25, 2019) <https://perma.cc/2PP8-63RJ>.

11 California's policies also affect other States because they purchase many vehicles and so
 12 California's actions could limit the vehicles available to States. Regardless, the California Waivers,
 13 impermissibly limit the authority and sovereignty of sister States.

14 Every State, as a matter of "the constitution" and "laws" of admission is "admitted into the
 15 union on an equal footing with the original states." *Pollard v. Hagan*, 44 U.S. 212, 229 (1845). No
 16 State may be admitted on either more or less favorable terms than others.

17 The Supreme Court most recently confirmed that the equal-sovereignty doctrine limits
 18 Congress's power to unequally burden the States' sovereign authority in *Shelby County, Ala. v.*
 19 *Holder*, 570 U.S. 529, 544–45 (2013). *Shelby County* challenged the Voting Rights Act's imposition
 20 on only some States of the duty to obtain federal permission before amending their election laws.
 21 *Id.* So Section 4 of the Voting Rights Act, which contained the formula used to decide which States
 22 needed federal preclearance before changing their election laws, was unconstitutional.

23 Moreover, *Shelby County* held that section 4 of the Voting Rights Act exceeded Congress's

1 authority under the Fifteenth Amendment, which empowers Congress to pass “appropriate
 2 legislation” enforcing the Amendment’s prohibition on denying or abridging the right to vote based
 3 on race. U.S. Const., amend. 15, § 2; *see Shelby Cnty.*, 570 U.S. at 536. In deciding whether such
 4 legislation was “appropriate,” courts must consult the background principle of equal sovereignty.
 5 *Shelby Cnty.*, 570 U.S. at 536. When legislation departs from that principle—as Section 4 did, by
 6 unequally limiting the States’ power to adopt and enforce election laws—it will be upheld as
 7 “appropriate legislation” only if the disparate treatment is justified. *Shelby Cnty.*, 570 U.S. at 544–
 8 45, 552; *accord Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009). Because
 9 the federal government failed to justify Section 4’s differential treatment of States, Congress had no
 10 authority to enact that provision. *Shelby Cnty.*, 570 U.S. at 551–55.

12 *Shelby County* shows the equal-sovereignty doctrine’s strength and importance within our
 13 constitutional structure. Even with the Fifteenth Amendment’s explicit grant of authority to
 14 Congress, Section 4, without a solid rationale undergirding discriminating against certain States,
 15 could not survive. *See South Carolina v. Katzenbach*, 383 U.S. 301, 329 (1966); *Shelby Cnty.*, 570
 16 U.S. at 551–55. Still, considering the background presumption of equal sovereignty, legislation
 17 under the authority of the Fifteenth Amendment that departs from the equal-sovereignty baseline is
 18 “appropriate” only if the need for such differential treatment is solidly grounded in evidence. *Shelby*
 19 *Cnty.*, 570 U.S. at 554. If the equal-sovereignty doctrine retains some strength even in contexts
 20 where the States lack complete sovereign equality, it ipso facto endures in contexts where the States
 21 have *not* lost any entitlement to sovereign equality.

24 The equal-sovereignty doctrine is not unlimited. The Constitution guarantees “equal
 25 sovereignty, not . . . equal treatment in all respects.” Thomas Colby, *In Defense of the Equal*
 26 *Sovereignty Principle*, 65 Duke L. J. 1087, 1149 (2016) (emphasis omitted). To demand that every
 27 law benefit every State equally “would make legislation impossible and would be as wise as to try
 28

1 to shut off the gentle rain from heaven because every man does not get the same quantity of water.”
 2 *State ex rel. Webber v. Felton*, 84 N.E. 85, 88 (Ohio 1908).

3 The equal-sovereignty doctrine demands “parity” only “as respects political standing and
 4 sovereignty.” *United States v. State of Texas*, 339 U.S. 707, 716 (1950), superseded by statute on
 5 other grounds recognized by *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 606
 6 (2019). Congress may not unequally limit or expand the States’ “political and sovereign power,” *id.*
 7 at 719 and must instead adhere to the principle that no State is “less or greater . . . in dignity or
 8 power” than another, *Coyle*, 221 U.S. at 566.

9 But differential treatment *unrelated* to a States’s core sovereign authority does not violate
 10 equal sovereignty. “Congress may devise . . . national policy with due regard for the varying and
 11 fluctuating interests of different regions.” *Sec’y of Agric. v. Cent. Roig Ref. Co.*, 338 U.S. 604, 616
 12 (1950). In other words, Congress may pass legislation treating States differently, as long as it does
 13 not give some States favorable or unfavorable treatment regarding the exercise of their sovereign
 14 authority.

15 Because of the preceding jurisdictional issues, this Court need not resolve that issue here:
 16 even if Congress can empower States to exercise authority to regulate State-specific concerns,
 17 EPA’s waivers applied to a situation in which California has no unique interest and cannot claim
 18 that the lack of waiver infringed a core sovereign power.

19 **B. The Clean Air Act violates the equal-sovereignty doctrine by allowing
 20 California to exercise sovereign authority withdrawn from every other state.**

21 The Clean Air Act’s section 209(a), by preempting State laws setting vehicle emission
 22 standards, limits the States’ sovereign authority, since the States would have the power to regulate
 23 new-car emissions but for section 209(a). After all, the “power of giving the law on any subject
 24 whatever, is a sovereign power.” *McCulloch v. Maryland*, 17 U.S. 316, 409 (1819). Preemption is
 25 permissible—but problems enter the picture when that preemption is selectively applied between
 26 states.

1 the States.

2 And section 209(a) not only limits State sovereignty, it does so unequally. Section 209(b)(1)
 3 allows California, and only California, to obtain a federal waiver that permits it to set vehicle
 4 emission standards. While other States may adopt California's standards, California alone may set
 5 those standards. California alone retains some of its "sovereign power" to "giv[e] the law" in this
 6 area. *McCulloch*, 17 U.S. at 409. Section 209(b) thus creates an "extension of the sovereignty of
 7 [California] into a domain of political and sovereign power of the United States from which the
 8 other States have been excluded." *Texas*, 339 U.S. at 719–20.

9
 10 Congress passed section 209 under its Commerce Clause authority. And in ratifying the
 11 Commerce Clause, States did not "compromise[] their right to equal sovereignty," Bellia & Clark,
 12 *International Law Origins*, 120 Colum. L. Rev. at 938; *see Shelby Cnty.*, 570 U.S. at 551–55. Thus,
 13 the Commerce Clause provides no basis for disrupting the States' retained right to equal sovereignty.
 14

15 At the very least, section 209(b) is unconstitutional as applied to EPA's Clean Air Act
 16 waiver. While the equal-sovereignty doctrine may permit laws allowing only some States to regulate
 17 issues that only those States face, *see Bellia & Clark, supra*, at 26–27, section 209(b) is not that sort
 18 of law. Every State contends with the potential downstream effects, including environmental effects,
 19 of trucks and other heavy-duty vehicles.

20
 21 Even accepting a narrow version of the equal-sovereignty doctrine, section 209(b) is
 22 unconstitutional. Rather than allow all States with their own unique environmental concerns to seek
 23 a waiver, it gives special treatment to only California. The Act forever excludes all other States, no
 24 matter if those States face their own localized environmental concerns. That special treatment that
 25 cannot be changed other than by Congress amending the statute violates equal sovereignty.

26
 27 So even if EPA tries to justify section 209(b) as addressing a California-specific air-quality
 28 concern, that justification does not suffice here. The waivers purport to allow California to regulate

1 greenhouse gases as part of the State's effort to curb global climate change. But that is precisely the
 2 problem: Congress did not authorize California to solve a California problem. Instead, it created a
 3 single-state carve out that allows California to create an alternative system to EPA to address a
 4 nationwide or global problem. Courts recognize that the causes and effects of any relevantly alleged
 5 climate change are "global," not State-specific, in nature. *City of New York v. Chevron Corp.*, 993
 6 F.3d 81, 88 (2d Cir. 2021). And even if section 209(b) may constitutionally authorize some waiver
 7 to allow California to address California-specific issues, it is unconstitutional in its application here
 8 because climate change is not just a problem in California.

10 According to EPA, carbon dioxide and other greenhouse gases produced by human activity
 11 "changed the earth's climate." *Causes of Climate Change*, U.S. Environmental Protection Agency,
 12 *see* <https://perma.cc/WR4F-TFDP>. EPA also contends that greenhouse gases "remain in the
 13 atmosphere long enough to become well mixed, meaning that the amount that is measured in the
 14 atmosphere is roughly the same all over the world, regardless of the source of the emissions."
 15 *Overview of Greenhouse Gases*, U.S. Environmental Protection Agency, <https://perma.cc/5777-TJRN>. So nothing California-specific there.

16 Indeed, EPA has never disturbed its finding that California's standards "will not
 17 meaningfully address global air pollution problems of the sort associated with [greenhouse-gas]
 18 emissions." 84 Fed. Reg. at 51,349. Nor did it make any new finding in this waiver decision.

19 There is no evidence even that California will suffer effects from climate change that are
 20 worse than those experienced by other States. EPA's own projections contend that temperature
 21 changes are projected to be greater in the Northeast. *See Climate Change and Social Vulnerability*
 22 *in the United States* 12, EPA (Sept. 2021), *see* <https://perma.cc/5VAE-9VLG>. So EPA believes that
 23 sea-level rise is projected to affect New York, Houston, and Philadelphia more than coastal
 24 California cities. *Id.* at 14. So too with the effects of automotive pollution. EPA contends that
 25

changes in particulate matter will more likely affect the Southeast. *Id.* at 22.

The bottom line: “Climate change affects all Americans.” *Id.* at 4. California is not uniquely challenged and its interest in slowing global climate change cannot justify a departure from the constitutional principle of equal State sovereignty. Nor can it justify an ex post attempt to maintain a waiver granted unconstitutionally by the EPA.

* * *

In sum, the equal sovereignty of the States forbids Congress from giving California alone the power to regulate a global risk faced by every State in the country and by every nation on Earth. And so what Congress did in disapproving the waivers must be lawful on the merits—if this Court chooses to reach that issue.

CONCLUSION

This Court should grant Defendants' motion to dismiss.

DATED: September 22, 2025

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DATED: September 22, 2025

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